

AMENDED IN SENATE MAY 1, 2001

**SENATE BILL**

**No. 563**

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**Introduced by Senator Morrow**

February 22, 2001

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An act to amend Section 5058 of, and to add Sections 5058.1, 5058.2, and 5058.3 to, the Penal Code, relating to the administration of prisons and parole.

LEGISLATIVE COUNSEL'S DIGEST

SB 563, as amended, Morrow. Corrections: administration: rulemaking procedures.

Existing law authorizes the Director of Corrections to prescribe rules and adopt regulations for the administration of the prisons and administration of paroles. Existing law provides that in general, these regulations shall be adopted pursuant the Administrative Procedures Act, but exempts from that requirement regulations relating to pilot programs or to imminent danger, as specified. Existing law also exempts emergency regulations from certain requirements of the Administrative Procedures Act.

This bill would revise and recast these provisions, and would make various technical changes. This bill would also define "pilot program" for purposes of exemptions relating to the adoption of regulations pursuant to these provisions.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

*The people of the State of California do enact as follows:*

SECTION 1. Section 5058 of the Penal Code is amended to read:

5058. (a) The director may prescribe and amend rules and regulations for the administration of the prisons and for the administration of the parole of persons sentenced under Section 1170 except those persons who meet the criteria set forth in Section 2962. The rules and regulations shall be promulgated and filed pursuant to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, except as otherwise provided in this section and Sections 5058.1 to 5058.3, inclusive. All rules and regulations shall, to the extent practical, be stated in language that is easily understood by the general public.

For any rule or regulation filed as regular rulemaking as defined in paragraph (5) of subdivision (a) of Section 1 of Title 1 of the California Code of Regulations, copies of the rule or regulation shall be posted in conspicuous places throughout each institution and shall be mailed to all persons or organizations who request them no less than 20 days prior to its effective date.

(b) The director shall maintain, publish and make available to the general public, a compendium of the rules and regulations promulgated by the director pursuant to this section and Sections 5058.1 to 5058.3, inclusive.

(c) The following are deemed not to be “regulations” as defined in Section 11342.600 of the Government Code:

(1) Rules issued by the director applying solely to a particular prison or other correctional facility, provided that the following conditions are met:

(A) All rules that apply to prisons or other correctional facilities throughout the state are adopted by the director pursuant to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

(B) All rules except those that are excluded from disclosure to the public pursuant to subdivision (f) of Section 6254 of the Government Code are made available to all inmates confined in the particular prison or other correctional facility to which the rules apply and to all members of the general public.

(2) Short-term criteria for the placement of inmates in a new prison or other correctional facility, or subunit thereof, during its

first six months of operation, or in a prison or other correctional facility, or subunit thereof, planned for closing during its last six months of operation, provided that the criteria are made available to the public and that an estimate of fiscal impact is completed pursuant to Sections 6650 to 6670, inclusive, of the State Administrative Manual.

(3) Rules issued by the director or director's designee that are excluded from disclosure to the public pursuant to subdivision (f) of Section 6254 of the Government Code.

SEC. 2. Section 5058.1 is added to the Penal Code, to read:

5058.1. (a) For the purposes of this section, "pilot program" means a program implemented on a temporary and limited basis in order to test and evaluate the effectiveness of the program, develop new techniques, or gather information.

(b) The adoption, amendment, or repeal of a regulation by the director to implement a legislatively mandated or authorized pilot program or a departmentally authorized pilot program, is exempt from Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, if the following conditions are met:

(1) A pilot program affecting male inmates affects no more than 10 percent of the total state male inmate population; a pilot program affecting female inmates affects no more than 10 percent of the total state female inmate population; and a pilot program affecting male and female inmates affects no more than 10 percent of the total state inmate population.

(2) The director certifies in writing that the regulations apply to a pilot program that qualifies for exemption under this section. The certification shall include a description of the pilot program and of the methods the department will use to evaluate the results of the pilot program.

(3) The certification and regulations are filed with the Office of Administrative Law and the regulations are made available to the public by publication pursuant to subparagraph (F) of paragraph (3) of subdivision (b) of Section 6 of Title 1 of the California Code of Regulations.

(4) An estimate of fiscal impact is completed pursuant to Sections 6650 to 6670, inclusive, of the State Administrative Manual.

(c) The adoption, amendment, or repeal of a regulation pursuant to this section becomes effective immediately upon filing with the Secretary of State.

(d) A regulation adopted pursuant to this section is repealed by operation of law, and the amendment or repeal of a regulation pursuant to this section is reversed by operation of law, two years after the commencement of the pilot program being implemented, unless the adoption, amendment, or repeal of the regulation is promulgated by the director pursuant to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code. For the purpose of this subdivision, a pilot program commences on the date the first regulatory change implementing the program is filed with the Secretary of State.

SEC. 3. Section 5058.2 is added to the Penal Code, to read:

5058.2. (a) Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code does not apply to a department action or policy implementing an action, that is based on a determination by the director that there is a compelling need for immediate action, and that unless the action is taken, serious injury, illness, or death is likely to result. The action, or the policy implementing the action, may be taken provided that the following conditions shall subsequently be met:

(1) A written determination of imminent danger shall be issued describing the compelling need and why the specific action or actions must be taken to address the compelling need.

(2) The written determination of imminent danger shall be mailed within 10 working days to every person who has filed a request for notice of regulatory actions with the department and to the Chief Clerk of the Assembly and the Secretary of the Senate for referral to the appropriate policy committees.

(b) Any policy in effect pursuant to a determination of imminent danger shall lapse by operation of law 15 calendar days after the date of the written determination of imminent danger unless an emergency regulation is filed with the Office of Administrative Law pursuant to Section 5058.3. This section shall in no way exempt the department from compliance with other provisions of law related to fiscal matters of the state.

SEC. 4. Section 5058.3 is added to the Penal Code, to read:

5058.3. (a) Emergency adoption, amendment, or repeal of a regulation by the director shall be conducted pursuant to Chapter

1 3.5 (commencing with Section 11340) of Part 1 of Division 3 of  
2 Title 2 of the Government Code, except ~~that~~ *with respect to the*  
3 *following*:

4 (1) Notwithstanding subdivision (e) of Section 11346.1 of the  
5 Government Code, the initial effective period for an emergency  
6 adoption, amendment, or ~~repeat~~ *repeal* of a regulation shall be 160  
7 days.

8 (2) Notwithstanding subdivision (b) of Section 11346.1 of the  
9 Government Code, no showing of emergency is necessary in order  
10 to adopt, amend, or repeal an emergency regulation if the director  
11 instead certifies, in a written statement filed with the Office of  
12 Administrative Law, that operational needs of the department  
13 require adoption, amendment, or ~~repeat~~ *repeal* of the regulation on  
14 an emergency basis. The written statement shall include a  
15 description of the underlying facts and an explanation of the  
16 operational need to use the emergency rulemaking procedure. This  
17 paragraph provides an alternative to filing a statement of  
18 emergency pursuant to subdivision (b) of Section 11346.1 of the  
19 Government Code. It does not preclude filing a statement of  
20 emergency. This paragraph only applies to the initial adoption and  
21 one readoption of an emergency regulation.

22 (3) Notwithstanding subdivision (b) of Section 11349.6 of the  
23 Government Code, the adoption, amendment, or repeal of a  
24 regulation pursuant to paragraph (2) shall be reviewed by the  
25 Office of Administrative Law within 20 calendar days after its  
26 submission. In conducting its review, the Office of Administrative  
27 Law shall accept and consider public comments for the first 10  
28 calendar days of the review period. Copies of any comments  
29 received by the Office of Administrative Law shall be provided to  
30 the department.

31 (b) It is the intent of the Legislature, in authorizing the  
32 deviations in this section from the requirements and procedures of  
33 Chapter 3.5 (commencing with Section 11340) of Part 1 of  
34 Division 3 of Title 2 of the Government Code, to authorize the  
35 department to expedite the exercise of its power to implement  
36 regulations as its unique operational circumstances require.